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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JUN 21 1999

JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE, WASHINGTON

9 UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF WASHINGTON

11 HOMESEEKERS MAGAZINES,
12 INC., an Idaho Corporation

13 Plaintiff,

14 v.

15 HOMESEEKERS.COM, INC.
16 a Nevada corporation;

17 Defendant.

CS-99-0181-RHW
Civil No.

COMPLAINT

(Demand for Jury)

18 Plaintiff, Homeseekers Magazines, Inc. alleges:

19
20 **Jurisdiction**

21 1. This case is a civil action arising under the Lanham Act, 15 U.S.C. §
22 1125, over which this Court has subject matter jurisdiction pursuant to 15
23 U.S.C. § 1121, 28 U.S.C. § 1331 and 28 U.S.C. § 1338 (a) and (b).

24 2. This Court has supplemental claim jurisdiction pursuant to 28 U.S.C.
25 § 1367 and pendant jurisdiction pursuant to 28 U.S.C. § 1338(b) over the
26 state law claims asserted in this Complaint as they are joined with
27 substantially related claims under the Lanham Act.
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Venue

3. Venue is proper in this District, pursuant to 28 U.S.C. § 1391.

Parties

4. Plaintiff Homeseekers Magazine, Inc., is an Idaho corporation having its principal office and place of business at E. 5710 Seltice Way, Coeur d'Alene, Idaho 83814.

5. Defendant Homeseekers.Com, Inc. is a Nevada corporation and is believed to have its principal office and place of business at 100 West Liberty Street, 10th Floor, Reno, Nevada 89501, or 2241 Park Place, Ste E, Minden, NV 89423.

Factual Background

6. Plaintiff has been using the HOMESEEKERS trademark since the 1970's and has widely distributed its Homeseekers Magazines since that time. The Homeseekers Magazine provides listings, advertisements and promotions of real property for sale, and other real estate services. Plaintiff provides services to real estate professionals of providing a media (the Homeseekers Magazines) for the advertising and listing of real property for sale. Plaintiff provides its Homeseekers Magazines to the public with the real estate advertising, listings and promotional information contained in it, providing the potential real estate public the real property information. Plaintiff's activities in promoting its services and providing its publications to the public have occurred in the stream of interstate commerce.

7. Plaintiff's use of the HOMESEEKERS trademark and trade name has become famous and is distinctive its publications and services.

1 8. Despite being aware of Plaintiff's prior extensive use and notoriety of
2 HOMESEEKERS, defendant chose to adopt and use it anyway, to gain the
3 benefit of the name and reputation of Plaintiff.

4 9. Defendant previously used the named NDS Software, and has since
5 adopted the HOMESEEKERS name and trademark in connection with
6 providing services to real estate professionals in the sale of real estate and
7 in providing an electronic publications for the advertising of real estate in
8 the western United States, and in this District. Defendant's use of the
9 HOMESEEKERS trademark has occurred and continues to occur in the
10 stream of interstate commerce.

11 10. Defendant uses the internet domain name "homeseekers.com" in
12 connection with providing services to real estate professionals in the sale of
13 real estate and in providing an electronic publications for the advertising of
14 real estate. Defendant promotes and advertises its services in numerous
15 states, including the State of Washington and the State of Idaho.

16
17 **Claim 1**

18 **Violation of the Lanhan Act**

19 11. Defendant's conduct in the use of the HOMESEEKERS trademark in
20 interstate commerce constitutes unfair and deceptive trade practices and
21 unfair competition, in violation of 15 U.S.C. § 1125(a). Defendants' conduct
22 creates a likelihood of confusion.

23 12. Defendants' intentional conduct using the HOMESEEKERS trademark
24 in connection with the providing of real estate services and real property
25 information, constitutes unfair competition, false designation of origin, false
26 or misleading description of fact, or false or misleading representation of
27 fact, which is likely to cause confusion or to cause mistake or deceive as to
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1 the affiliation, connection, or association of the defendant and its services,
2 and the Plaintiff and its services and publications.

3 13. Defendants' conduct as stated herein, has damaged Plaintiff in an
4 amount to be proven at trial.

5
6 **Claim 2**

7 **Violation of R.C.W. 19.86**

8 14. Defendant's conduct in the use of the HOMESEEKERS trademark and
9 trade name in commerce constitutes unfair and deceptive trade practices and
10 unfair competition, in violation of R.C.W. 19.86 et seq. Defendants'
11 conduct creates a likelihood of confusion with Plaintiff's longstanding use of
12 the HOMESEEKERS trademark.

13 15. Defendants' conduct impacts the public interest, has been repetitive,
14 and continues to have a potential for repetition.

15 16. Defendants' intentional conduct using the HOMESEEKERS trademark
16 in connection with the providing of real estate services and real property
17 information, constitutes unfair competition, false designation of origin, false
18 or misleading description of fact, or false or misleading representation of
19 fact, which is likely to cause confusion or to cause mistake or deceive as to
20 the affiliation, connection, or association of the defendant and its services,
21 and the Plaintiff and its services and publications.

22 17. Defendants' conduct as stated herein, has damaged Plaintiff in an
23 amount to be proven at trial.

24 **Claim 3**

25 **State Trademark Dilution**

26 18. Plaintiff's widespread, substantial, long term, continuous and extensive
27 use of the HOMESEEKERS trademark has resulted in it becoming widely
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1 recognized, and substantially renown. Plaintiff's HOMESEEKERS trademark
2 is "famous" and has "distinctive quality", both within the meaning of R.C.W.
3 19.77.160.

4
5 19. Defendant's commercial use of the HOMESEEKERS trademark causes
6 dilution of the distinctive quality of Plaintiff's HOMESEEKERS trademark.

7 20. Defendants' conduct as stated herein is wilful and has damaged
8 Plaintiff in an amount to be proven at trial.

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10 **Claim 4**

11 **Federal Dilution of Trademark/Trade Name**

12 21. Plaintiff's widespread, substantial, long term, continuous and extensive
13 use of the HOMESEEKERS trademark has resulted in it becoming widely
14 recognized, and substantially renown. Plaintiff's HOMESEEKERS trademark
15 is "famous" and "distinctive" within the meaning of 15 U.S.C. § 1125(b).

16 22. Defendant's commercial use of the HOMESEEKERS trademark causes
17 dilution of the distinctive quality of Plaintiff's HOMESEEKERS trademark.

18 23. Defendants' conduct as stated herein is wilful and has damaged
19 Plaintiff in an amount to be proven at trial.

20
21 **Claim 5**

22 **Common Law Trademark Infringement**

23 24. Defendant's conduct in the use of the HOMESEEKERS trademark as
24 set forth above has created a likelihood of confusion or mistake as to the
25 source of goods and/or services, and as such, constitutes common law
26 trademark infringement under the laws of the State of Washington, Idaho,
27 Montana, Oregon and California.

1 25. Defendants' conduct as stated herein, has damaged Plaintiff in an
2 amount to be proven at trial.

3 **Claim 6**

4 **Common Law Unfair Competition**

5 26. Defendant's conduct in the use of the HOMESEEKERS trademark as
6 set forth above has created a likelihood of confusion or mistake as to the
7 source of goods and/or services, and as such, constitutes common law unfair
8 competition under the laws of the State of Washington, Idaho, Montana,
9 Oregon and California, in that the defendants have chosen as a name and
10 a trademark for their competing business which is similar to Plaintiff's
11 established trade name and trademark, which is likely to confuse or deceive
12 the consuming public as to the origin and source of the defendants' services.

13 27. Plaintiff is entitled to injunctive relief preventing the defendant from
14 using the name "HOMESEEKERS" in connection with its business, and to
15 recover both the damages it has suffered and any profits the defendants have
16 earned as a result of their unlawful actions.

17 28. Defendants' conduct as stated herein, has damaged Plaintiff in an
18 amount to be proven at trial.

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20 **Claim 7**

21 **Trade Name Infringement**

22 21. Defendants' acts as described above constitute trade name
23 infringement under Washington law, in that the defendants have appropriated
24 the use of an existing, previously used trade name to compete in the same
25 business, in a manner that tends to deceive the public and confuse the two
26 businesses in the minds of the consumer.

22. Plaintiff is entitled to injunctive relief preventing the defendant from using the name "HOMESEEKERS" in connection with its real estate related services, and to recover both the damages it has suffered and any profits the defendants have earned as a result of their unlawful actions.

Relief Requested/Prayer

Plaintiff prays that the Court enter judgment for the following:

A. Plaintiff has no adequate remedy at law and is entitled to injunctive relief under 15 U.S.C. § 1116, R.C.W. 19.86 et. seq., and R.C.W. 19.77.160, ordering and enjoining that defendant, its directors and officers, agents, servants, employees, and all other persons in active concert or privity or in participation with them, cease and desist from the further infringement of Plaintiff's "HomeSeekers" trademark and trade name, including without limitation: from using "Homeseekers" and "homeseekers.com" (and any other name confusingly similar) in connection with providing services to real estate professionals and in connection with providing an electronic or other listing service or publication for the sale of real estate and/or real estate related services.

B. That Defendants be required to file with the Court and to serve on Plaintiff within thirty days after service of the Court's order as herein requested, a report in writing, under oath, setting forth in detail the manner and form in which Defendant has complied with the Court's order.

C. All damages incurred by Plaintiff in an amount to be proven at trial.

D. An order that all documents and things containing Plaintiff's "Homeseekers" trademark, be seized and delivered upon oath to Plaintiff.

1 E. All costs and disbursements incurred herein, including reasonable
2 attorney fees incurred by Plaintiff, under all applicable common law and
3 statutory authority, including without limitation, R.C.W. 19.86 et. seq., and
4 15 U.S.C. §1117.

5 F. That Defendants be required to account and pay over to Plaintiff, for
6 all gains, profits, and advantages derived from its acts as complained herein
7 and set forth in the claims above.

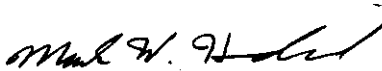
8 G. That Defendants be required to pay to Plaintiff such damages, which
9 may be subject to trebling, pursuant to R.C.W. 19.86 et seq. and Title 15 of
10 the United States Code, as Plaintiff has sustained in consequence of
11 Defendants unfair trade practices and unfair competition, and to account for
12 all gains, profits, and advantages derived by Defendants by said unfair trade
13 practices and unfair competition.

14 H. For such other and further relief as the Court deems just and
15 equitable.

16
17 **Demand for Jury**

18 Plaintiff hereby demands a jury on all issues so triable.

19 Dated this 21st day of June, 1999.

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